

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.**

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 18

Respondent; and

NERONE & SONS, INC.
R.G. SMITH COMPANY, INC.
KMU TRUCKING & EXCAVATING
SCHIRMER CONSTRUCTION CO.
PLATFORM CEMENT
21st CENTURY CONCRETE CONSTRUCTION, INC.
INDEPENDENCE EXCAVATING, INC.

08-CD-135243

Charging Parties; and

LABORERS' INTERNATIONAL UNION OF NORTH
AMERICA, LOCAL 310

Party-In-Interest.

**RESPONDENT'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S
AUGUST 1, 2016 DECISION AND MAY 4, 2016 AMENDED ORDER GRANTING
CHARGING PARTIES' MOTION IN LIMINE**

Pursuant to Section 102.46(a) of the Board's Rules and Regulations, Respondent International Union of Operating Engineers, Local 18 ("Local 18") hereby submits the following Exceptions to Administrative Law Judge David I. Goldman's August 1, 2016 Decision and May 4, 2016 Amended Order ("Amended Order") Granting Charging Parties' Motion in Limine in the present matter:¹

1. Local 18 excepts to the ALJ's finding that Local 18's work preservation affirmative defense lacks merit. [ALJ Dec., pp. 11: 25-30, 13: 1-32, 14: 1-50, 15: 1-47, 16: 1-11.]

¹ The ALJ's Decision and Amended Order will hereafter be cited to as "Dec." and "Ord.", respectively.

2. Local 18 excepts to the ALJ's finding that Local 18's work preservation affirmative defense must be rejected as a matter of Board precedent, including, but not limited to *Operating Engineers Local 18 (Donley's, Inc.)*, 363 NLRB No. 184 (2016) (*Donley's IV*). [ALJ Dec. pp. 11: 25-30, 14: 1-37, 15: 21-38, 16: 6-8, 16: 10-11.]

3. Local 18 excepts to the ALJ's finding that Local 18's maintenance of grievances under the work preservation clause contained within the 2012-2015 and 2015-2019 CEA Agreement violate Section 8(b)(4)(D) of the National Labor Relations Act. [ALJ Dec., p. 11: 13-23.]

4. Local 18 excepts to the ALJ's Conclusion of Law No. 3. [ALJ Dec., p. 16: 25-30.]

5. Local 18 excepts to the ALJ's finding that *Laborers' Local 310 (KMU Trucking & Excavating)*, 361 NLRB No. 37 (2014) (*Donley's III*) and *Operating Engineers Local 18 (Nerone & Sons)*, 363 NLRB No. 19 (2015) (*Nerone*) have "for all practical purposes" determined the disposition of the present matter. [ALJ Dec., p. 11: 38-50.]

6. Local 18 excepts to the ALJ's finding that Local 18 is seeking to contest the underlying Board awards of work in *Donley's III* and *Nerone*. [ALJ Dec., p. 12: 17-18.]

7. Local 18 excepts to the ALJ's finding that Local 18's affirmative defense of collusion is a threshold issue not subject to relitigation in the present matter. [ALJ Dec., pp., 11: 25-30, 12: 26-30, 16: 10-11.]

8. Local 18 excepts to the ALJ's finding that Local 18's affirmative defense of collusion is a threshold issue not subject to relitigation in the present matter. [ALJ Ord., p. 6.]

9. Local 18 excepts to the ALJ's ruling whereby it denies Local 18's Motion to Reopen the Record on the basis that Local 18's proffered evidence lacks sufficient weight and character. [ALJ Dec., pp. 12-13: fn. 4.]

10. Local 18 excepts to the ALJ's implicit finding that Local 18's work preservation affirmative defense is a threshold issue not subject to relitigation in the present matter. [ALJ Dec., pp. 13: 5-32, 14: 40-43, 16: 10-11.]

11. Local 18 excepts to the ALJ's finding that Local 18's work preservation affirmative defense is not an element of a Section 8(b)(4)(D) claim, and is therefore a threshold issue not subject to relitigation in the present matter. [ALJ Ord., pp. 6-7.]

12. Local 18 excepts to the ALJ's Amended Order granting Charging Parties' Motion in Limine and holding that the following categories of proffered evidence by Local 18 are irrelevant because they are part and parcel of Local 18's attempt to relitigate the affirmative defenses of collusion and work preservation:

- a. Evidence related to work performed under the National Maintenance Agreement, Association of General Contractors Agreement, or Highway Heavy Agreement;
- b. Evidence related to work performed outside the geographic jurisdiction of the Section 10(k) awards in *Donley's III* and *Nerone* (i.e., the overlap between the jurisdictions of Local 18 and Party-in-Interest Laborers' Local 310);
- c. Evidence related to operating engineers' training on forklifts and/or skid-steers;
- d. Evidence concerning the decisions, discussions, litigation, meetings, or determinations of the Operating Engineers Health and Welfare and Pension Funds;
- e. Evidence related to work referral records that do not relate directly to the Charging Parties' work on a job performed under the CEA Building Construction Agreement or were not issued for work to be performed within the geographic jurisdiction of the Section 10(k) awards in *Donley's III* and *Nerone*;
- f. Evidence relating to any agreement purportedly entered into between the International Union of Operating Engineers and the Laborers' International Union of North America in 1954 related to the assignment of forklift and/or skid-steer work;
- g. Evidence relating to the bargaining history between the CEA and, on the one hand, Local 18 and, on the other Laborers' Local 310, concerning the assignment of forklift and skid-steer work;
- h. Evidence directed to the issue of collusion;
- i. Evidence directed to the work preservation affirmative defense; and
- j. Evidence related to forklift and skid-steer work performed by operating engineers by Charging Party employers. [ALJ Ord., p. 8.]

13. Local 18 excepts to the ALJ's finding that Local 18's maintenance of grievances under the work preservation clause contained within the 2012-2015 and 2015-2019 CEA Agreement are susceptible to resolution under Section 8(b)(4)(D) of the National Labor Relations Act as opposed to Section 8(e). [ALJ Dec., p. 11: 13-23.]

14. Local 18 excepts to the ALJ's Remedy and Order. [ALJ Dec., pp. 16: 34-46, 17: 1-40, 18: 1-33.]

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing was electronically filed with the National Labor Relations Board, Office of the Executive Secretary, and served via email to the following on this 12th day of September, 2016:

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